

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) Bankruptcy No. 19-70386-JAD
Jerry A. McKinney and)
Kathy J. McKinney,) Chapter 13
Debtors,)
Jerry A. McKinney and) Hearing Date: 05/27/20 @ 10:00 a.m.
Kathy J. McKinney,)
Movants,) Response Due: 05/07/20
vs.)
M&T Bank and)
Ronda Winnecour, Chapter 13 Trustee,)
Respondent.) Document No.

**MOTION TO COMPEL M&T BANK TO ENDORSE
INSURANCE CHECK FOR ROOF DAMAGE**

AND NOW, come the Debtors, Jerry A. McKinney and Kathy J. McKinney, by and through their counsel, David Valencik and Calaiaro Valencik, and presents the following:

1. Jerry A. McKinney and Kathy J. McKinney filed a voluntary petition for relief under Chapter 13 of the United States Bankruptcy Code on June 27, 2019.
2. The Debtors roof was damaged on July 4, 2018.
3. The Debtors made an insurance claim for damage to their roof on July 6, 2018. A copy of that claim is attached hereto and marked as **Exhibit "A"**.
4. The Debtors' insurance claim was approved on July 16, 2018, and Nationwide issued a check to the Debtors and M&T Mortgage Corp. in the amount of \$4,612.11.
5. The Debtors' insurance company, Nationwide, reissued that check to the Debtors and M&T Mortgage Corp. on August 22, 2019, in the amount of \$4,612.11. A copy of that check is attached hereto and marked as **Exhibit "B"**.

6. This check is now stale and will have to be reissued again by Nationwide Insurance due to the refusal of M&T Bank.

7. The Debtors received a quote from Lennox Contracting, a contractor to repair the Debtors' damaged roof in the amount of \$4,400.00. A copy of that quote is attached hereto and marked as **Exhibit "C"**.

8. The contractor told Debtors that the repair would be a two- or three-hour job.

9. The Debtors contacted M&T Bank to have the check endorsed and pay for the home repairs.

10. M&T Bank refused to sign the check to complete the work.

11. Counsel for the Debtors contacted counsel for M&T Bank and requested that his client endorse the check so the repairs could be made to the Debtors' roof.

12. The actions of M&T Bank are in bad faith.

13. M&T Bank continues to refuse to sign the check because they want it to be paid out in stages.

14. The contractor refuses to be paid in stages as the job is expected to be completed in one day.

15. The Debtors have placed a tarp on their roof to stop the water damage and the repairs need to be made as soon as possible.

16. The delay caused by M&T Bank's refusal to execute the check in August 2019 may have caused additional damages to the Debtors' residence.

17. The Debtors request that the Court Order M&T Bank endorse the reissued check made payable to the Debtors and M&T Mortgage Corp. in the amount of

\$4,612.11 to Lennox Contracting for the repair of Debtors' damaged roof.

18. The Debtors request that the Court order M&T Bank to pay Lennox Contracting directly for any additional damage cause by their refusal to execute the check.

19. The Debtors request that the Court order M&T Bank to pay for Debtors' Counsel fees for having to bring this motion.

WHEREFORE, the Debtors request that this Honorable Court enter an Order directing M&T Bank to endorse the reissued check made payable to the Debtors and M&T Mortgage Corp. in the amount of \$4,612.11 to Lennox Contracting for the repair of Debtors' damaged roof under the terms and conditions set forth in this motion, that M&T Bank be required to pay Lennox Contracting for any additional damage caused by their refusal to execute the check in August 2019, that M&T Bank pay attorney fees to Calaiaro Valencik for bringing this motion and any other relief that this Honorable Court deems appropriate and just under these circumstances.

Respectfully Submitted,

Dated: April 20, 2020

BY: /s/ David Z. Valencik
David Z. Valencik, Esquire, PA I.D. #308361
dvalencik@c-vlaw.com

CALAIARO VALENCIK
938 Penn Avenue, Suite 501
Pittsburgh, PA 15222-3708
(412) 232-0930